19✓

MONTANA LEGISLATIVE HISTORY

Chapter 440 19 99

Bill H 560 S _____ Original bill & history ✓C

H. Committee on Local Gvt.		S. Committee on Local Gvt.	
Hearing Date(s) 2/16	✓C	Hearing Date(s) 3/23	✓C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1999 LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of the 1999 legislative minutes, it is suggested that you contact your state legislators. Please see the enclosed "letter to the editor" from the November 1996 issue of The Montana Lawyer in this regard.

LETTERS TO THE EDITOR

Legislative histories may be history

From Steve Jordan, State Law Library reference librarian

Legislative histories as Montanans have known them will likely become a thing of the past. Pursuant to Senate Joint Resolution 4, the Legislative Council has voted to recommend to the House and Senate Rules Committees that they adopt a new method for keeping minutes of standing committees, beginning with the 1997 session.

The current summary minutes would be eliminated, replaced by minutes containing only the following:

⇒ Date, time and place of the meeting.

⇒ Committee members in attendance, excused or absent.

⇒ Bills heard.

⇒ List of witnesses.

⇒ Bills acted upon, including amendments.

⇒ Motions and votes.

⇒ Date on which the hearing notice was posted for each bill.

⇒ List of visitors.

⇒ Exhibits, including written testimony.

Missing from this new format would be the summaries of oral testimony, questions and responses, and committee discussion. This information would be available only from tape recordings of the proceedings to be kept at the Montana Historical Society.

Procedurally, this proposal is a rule change, not a statutory change. If the Rules Committees accept the Legislative Council recommendation, the matter will be forwarded to the full House and Senate for adoption through a resolution. This process would most probably occur during the first week of the 1997 session.

Legislative minutes for all standing committees date from about the mid-1950s, with the State Archives being the repository for the original minutes and the State Law Library having copies. These minutes form the core of legislative histories. Judges, attorneys, paralegals, lobbyists, legislative personnel, students, faculty, the press, and others use these histories for purposes such as statutory interpretation, research, and legislative drafting.

Often it is in the open dialogue in the legislative hearings that legislative intent can be more readily determined. If the Legislative Council's recommendation is adopted, paper access to the interaction between witnesses and committee members and the members themselves, will be nonexistent.

Concerns should be addressed to one's legislators. ❐

2/11	Hearing		
2/12	Committee Executive Action--Bill Passed	18	0
2/12	Committee Report--Bill Passed		
2/16	2nd Reading Passed	84	14
2/17	3rd Reading Passed	88	11
	Transmitted to Senate		
2/22	Referred to Business and Industry		
3/25	Hearing		
3/25	Committee Executive Action--Bill Concurred	6	1
3/25	Committee Report--Bill Concurred		
3/27	2nd Reading Concurred	48	0
3/27	3rd Reading Concurred	46	2
	Returned to House		
3/29	Sent to Enrolling		
3/29	Returned from Enrolling		
3/30	Signed by Speaker		
3/30	Signed by President		
3/31	Transmitted to Governor		
4/06	Signed by Governor		
4/07	Chapter Number Assigned		
	Chapter Number 270		
	Effective Date: 10/01/1999 - All Sections		

HB 559 Introduced by Curtiss *LC0738 Drafter: MacMaster*

Provide Compensation for the Owner of a Parcel of Real Property, the Fair Market Value of Which Is Substantially and Disproportionately Reduced by the Action of a State Government Agency;...

2/08	Introduced and 1st Reading		
2/08	Referred to State Administration		
2/16	Hearing		
2/17	Committee Executive Action--Bill Passed	11	6
2/18	Committee Report--Bill Passed		
2/22	2nd Reading Passed	58	41
2/23	3rd Reading Passed	59	41
	Transmitted to Senate		
2/23	Referred to State Administration		
3/02	Rereferred to Judiciary		
3/16	Hearing		
3/25	Tabled in Committee		
	Died in Standing Committee		

HB 560 Introduced by Hanson, et al. *LC1373 Drafter: Kurtz*

Generally Revise County Road Laws;...

2/08	Introduced and 1st Reading		
2/08	Referred to Local Government		
2/16	Hearing		
2/19	Committee Executive Action--Bill Passed as Amended	14	2
2/19	Committee Report--Bill Passed as Amended		
2/22	2nd Reading Passed as Amended	98	1
2/24	3rd Reading Passed	89	10

	Transmitted to Senate		
3/01	Referred to Local Government		
3/23	Hearing		
3/26	Committee Executive Action--Bill Concurred as Amended	9	2
3/26	Committee Report--Bill Concurred as Amended		
3/27	2nd Reading Concurred as Amended	48	1
3/29	3rd Reading Concurred	41	6
	Returned to House with Amendments		
4/15	2nd Reading Senate Amendments Concurred	100	0
4/16	3rd Reading Passed as Amended by Senate	93	5
4/16	Sent to Enrolling		
4/17	Returned from Enrolling		
4/20	Signed by Speaker		
4/20	Signed by President		
4/20	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 440		
	Effective Date: 10/01/1999 - All Sections		

HB 561 Introduced by Gallus, et al. *LC1456 Drafter: C. Erickson*

Allow the Transportation Commission to Transfer Apportioned Primary Highway System Funds Within and Between Financial Districts;...

12/31	Fiscal Note Needed		
2/08	Introduced and 1st Reading		
2/08	Referred to Transportation		
2/08	Fiscal Note Requested		
2/12	Fiscal Note Received		
2/12	Fiscal Note Signed		
2/12	Fiscal Note Printed		
2/15	Hearing		
2/18	Committee Executive Action--Bill Passed	18	0
2/18	Committee Report--Bill Passed		
2/20	2nd Reading Passed	98	2
2/22	3rd Reading Passed	87	13
	Transmitted to Senate		
2/23	Referred to Highways and Transportation		
3/09	Hearing		
3/12	Committee Executive Action--Bill Concurred	11	0
3/12	Committee Report--Bill Concurred		
3/16	2nd Reading Concurred	49	0
3/17	3rd Reading Concurred	49	0
	Returned to House		
3/18	Sent to Enrolling		
3/19	Returned from Enrolling		
3/20	Signed by Speaker		
3/23	Signed by President		
3/23	Transmitted to Governor		
3/25	Signed by Governor		
3/27	Chapter Number Assigned		
	Chapter Number 177		
	Effective Date: 10/01/1999 - All Sections		

House BILL NO. 560

INTRODUCED BY Hanson
(Primary Sponsor) Ross Wit

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COUNTY ROAD LAWS; CLARIFYING THE DUTIES OF A BOARD OF COUNTY COMMISSIONERS REGARDING COUNTY ROADS; ESTABLISHING THE CONDITIONS UNDER WHICH A ROAD MAY BE DESIGNATED AS A COUNTY ROAD; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO TEMPORARILY CLOSE A ROAD UNDER ITS JURISDICTION; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO MAINTAIN A ROAD TO THE DEGREE THAT IT DETERMINES IS APPROPRIATE; REQUIRING THAT PUBLIC NOTICE BE GIVEN AND A PUBLIC HEARING BE HELD BEFORE A ROAD MAY BE ABANDONED BY THE STATE; AND AMENDING SECTIONS 7-14-2101, 7-14-2103, 7-14-2127, 60-1-201, AND 60-2-107, MCA."

WHEREAS, it has become necessary to clarify the duties of boards of county commissioners regarding roads under their jurisdiction; and

WHEREAS, it is appropriate to specify how the maintenance and oversight of certain roads may be transferred to a county in a manner that protects private property rights and allows the public to participate in the process; and

WHEREAS, clarifying in statute the definition of a county road and the rights and responsibilities of a board of county commissioners will prevent county road-related disputes from entering the court system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-14-2101, MCA, is amended to read:

"**7-14-2101. General powers of county relating to roads and bridges.** (1) The board of county commissioners, under ~~such~~ the limitations and restrictions ~~as~~ that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes ~~therefor~~ for county roads and bridges as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in ~~such~~ part as may be

agreed upon between the boards of the counties concerned;

(ii) levy taxes ~~therefor~~ for the laying out, maintenance, control, management, and improvement of county roads and bridges as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) place ~~such~~ a joint project in the budget and levy taxes ~~therefor~~ for a joint project as provided by law.

(2) (a) Unless the context requires otherwise, for the purposes of this chapter, county road means: ~~any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter~~

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; or

(iii) a road that has been acquired by eminent domain or by adverse use by the public and ordered open to the public by a court of competent jurisdiction and accepted by resolution as a county road by a board of county commissioners.

(b) The location of a county road is where the road is constructed, where it currently exists, or where it is maintained, even if the road is not on a section line or if it does not correspond with the legal description in county records.

(c) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state or county funds.

(d) A survey is not required of an existing public road that is accepted by resolution by a board of county commissioners.

(e) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

~~(b)~~(f) Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills."

Section 2. Section 7-14-2103, MCA, is amended to read:

"**7-14-2103. Duties of county commissioners concerning county roads.** (1) ~~Each~~ A board of county commissioners has general supervision over the county roads within the county.

(2) ~~Each~~ A board may survey, view, lay out, record, open, work, and maintain county roads that are ~~petitioned for by freeholders~~ established in accordance with this chapter. Guideposts must be erected.

(3) ~~Each~~ A board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations."

Section 3. Section 7-14-2127, MCA, is amended to read:

"**7-14-2127. Temporary limitation or prohibition of traffic.** ~~Each~~ (1) A board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part ~~thereof~~ of a county road when it is necessary in order to preserve or repair ~~such~~ the roads.

(2) A board of county commissioners may temporarily close a county road or bridge or any part of a county road for maintenance or repair if the board determines that the road or bridge is unsafe. This temporary closure is not considered abandonment. The board of county commissioners shall erect signs indicating that the road is closed."

Section 4. Section 60-1-201, MCA, is amended to read:

"**60-1-201. Classification -- highways and roads.** (1) Public highways of this state are classified as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways ~~which~~ that are not designated, selected, or established by the commission or

constructed or maintained by the department ~~are~~ may be designated as county roads or city streets upon the acceptance of the county or city.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(4) City streets are those public highways under the jurisdiction of municipal officials."

Section 5. Section 60-2-107, MCA, is amended to read:

"**60-2-107. Abandonment of highways -- exchange of roadways -- public notice required.** (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) Before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

~~(2)~~(3) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN CHRIS AHNER**, on February 16, 1999 at 3:05 P.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Chris Ahner, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. David Ewer, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. Toni Hagener (D)
Rep. Bob Lawson (R)
Rep. Mark Noennig (R)
Rep. Scott J. Orr (R)
Rep. Trudi Schmidt (D)
Rep. Carley Tuss (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Steven Gallus (D)
Rep. Sam Kitzenberg (R)
Rep. Jeff Mangan (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kimberly Walkenhorst, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB589, HB560,HB476, HB447, HB431, HB619, 2/16/1999
Executive Action: HB363, HB336, HB375, HB441, HB325, HB351, HB408, HB431, HB476, HB560, HB619,HB447

Bill Kennedy, Yellowstone County Commissioner
{Tape : 1; Side : B; Approx. Time Counter : 22.8}

Questions from Committee Members and Responses:
{Tape : 1; Side : B; Approx. Time Counter : 24.3}

Closing Statement by Sponsor: Rep. John Mercer
{Tape : 2; Side : A; Approx. Time Counter : 8.2}

HEARING ON HB619

Opening Statement by Sponsor: Rep. George Golie, HD44
{Tape : 2; Side : A; Approx. Time Counter : 9.1}

Proponents' Testimony:

Jane Jelinski, Montana Association of Counties
{Tape : 2; Side : A; Approx. Time Counter : 12.1}

Opponents' Testimony: None

Questions from Committee Members and Responses:
{Tape : 2; Side : A; Approx. Time Counter : 12.8}

Closing Statement by Sponsor: Rep. George Golie
{Tape : 2; Side : A; Approx. Time Counter : 28.9}

HEARING ON HB560

Opening Statement by Sponsor: Rep. Marian Hanson, HD1
{Tape : 2; Side : A; Approx. Time Counter : 30}

Proponents' Testimony:

Vern Peterson, Fergus County Commissioner
{Tape : 2; Side : B; Approx. Time Counter : 2.3}

Tom Hardt, Private Citizen EXHIBIT(3)
{Tape : 2; Side : B; Approx. Time Counter : 6.9}

Bill Kennedy, Yellowstone County Commissioner
{Tape : 2; Side : B; Approx. Time Counter : 8.1}

Dan Gear, Glacier County
{Tape : 2; Side : B; Approx. Time Counter : 8.8}

Bill Rappold, Chair County Commissioner
{Tape : 2; Side : B; Approx. Time Counter : 10.9}

Glenna Obie, Chairman Jefferson County Commissioner
{Tape : 2; Side : B; Approx. Time Counter : 11.5}

Lorna Karn, Montana Farm Bureau
{Tape : 2; Side : B; Approx. Time Counter : 11.7}

Tory Shulman, Public Land Access Association EXHIBIT(4)
{Tape : 2; Side : B; Approx. Time Counter : 15.6}

Informational Testimony:

John Blacker, Department of Transportation
{Tape : 2; Side : B; Approx. Time Counter : 19.6}

Opponents' Testimony: None

Questions from Committee Members and Responses:
{Tape : 2; Side : B; Approx. Time Counter : 22}

Closing Statement by Sponsor: Rep. Marian Hanson
{Tape : 3; Side : A; Approx. Time Counter : 4}

HEARING ON HB476

Opening Statement by Sponsor: Rep. Royal Johnson, HD10
{Tape : 3; Side : A; Approx. Time Counter : 5.6}

Proponents' Testimony:

Mike Kadas, Mayor City of Missoula
{Tape : 3; Side : A; Approx. Time Counter : 9.8}

Alec Hansen, Montana League of Cities and Towns
{Tape : 3; Side : A; Approx. Time Counter : 13.8}

Rep. David Ewer, HD3
{Tape : 3; Side : A; Approx. Time Counter : 14.3}

Opponents' Testimony: None

Questions from Committee Members and Responses:
{Tape : 3; Side : A; Approx. Time Counter : 16.7}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on March 23, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Ken Miller, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Dorothy Eck (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. J.D. Lynch (D)
Sen. Dale Mahlum (R)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 338, 3/19/1999; HB 560, 3/19/1999; HB 586, 3/19/1999; HB 325, 3/19/1999; HB 326, 3/19/1999

Executive Action: HB 326; HB 325; HB 586; HB 338; HB 614; HB 212

HEARING ON HB 338

Sponsor: REP. GAY ANN MASOLO, HD 40, Townsend

Proponents:

Eric Griffin, Lewis and Clark County Public Works Director
Jim Johnston, Butte-Silverbow Public Works Director

Opponents: None

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, Townsend, said this bill will raise the bidding process for counties from $20,000 to $50,000.

Proponents' Testimony:

Eric Griffin, Lewis and Clark County Public Works Director, said increasing the bid limit to $50,000 will enable Lewis and Clark County and road supervisors throughout the state to more effectively purchase equipment, materials and supplies. By raising the bid limit it will enable county governments a better opportunity to negotiate with local contractors, suppliers, dealers, and vendors.

Jim Johnston, Butte-Silverbow Public Works Director, said bidding limits are so low they can't even buy a pick-up locally without going to bid.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. MASOLO said the county can hardly buy anything for $20,000 and this bill will save the counties money.

HEARING ON HB 560

Sponsor: REP. MARIAN HANSON, HD 1, Ashland

Proponents:

Vern Petersen, Fergus County Commissioner
Tom Hardin, Teton County Road Department
John Youngberg, Farm Bureau and Stockgrowers Assoc.
Bill Kennedy, Yellowstone County Commissioner
Glenna Obie, Jefferson County Commissioner
Bill Icenoggle, Glacier County Commissioner
Allan Lowry, Glacier County Commissioner

Eric Griffin, Lewis and Clark County Public Works Director
Bill Rappold, Pondera County

Opponents:

Conrad Yerger, West Babcock Street Home owners Assoc., Bozeman
Jim Stephens, West Babcock Street Home Owners Assoc.
Ray Rowe, West Babcock Street Home Owners Assoc.

Opening Statement by Sponsor:

REP. MARIAN HANSON, HD 1, Ashland, said this spells out what a county can do with their roads and defines duties relating to county roads. The main parts of the bill are on page 2 and 4. She said lines 19-24 were stricken out and she had some amendments to help this bill. **EXHIBIT(1)** A public hearing has to be held before the county can do any of the ideas that are on page 2, lines 12-28. She said often times the highway commission will hold a hearing a long ways away and the county will not be able to attend. They ask that they at least be notified and have a hearing in the county that is being affected.

{Tape : 1; Side : A; Approx. Time Counter : 3:10 p.m.}

Proponents' Testimony:

Vern Petersen, Fergus County Commissioner, said there have been many people involved in bringing this bill to the Legislature. There has to be a public hearing held before any action can be taken and counties cannot just inherit roads.

Tom Hardin, Teton County Road Department, rose in support of HB 560. **EXHIBIT(2)**

John Youngberg, Farm Bureau and Stockgrowers Assoc., explained the amendments. **(EXHIBIT 1)**

Bill Kennedy, Yellowstone County Commissioner, rose in support of the bill.

Glenna Obie, Jefferson County Commissioner, read a letter from Rickerd Felstet. **EXHIBIT(3)**

Bill Icenoggle, Glacier County Commissioner, said he lives on 50 miles of dirt road and nobody uses a county road more than he does and he supports this bill.

Allan Lowry, Glacier County Commissioner, rose in support of **HB 506.**

Eric Griffin, Lewis and Clark County Public Works Director, said this bill helps provide clarification to issues concerning county roads.

Bill Rappold, Pondera County, urged support of this bill.

{Tape : 1; Side : A; Approx. Time Counter : 3:20 p.m.}

Opponents' Testimony:

Conrad Yerger, West Babcock Street Home Owners Assoc., Bozeman, said West Babcock Street was built and paid for by farmers and home owners. He said any work that was done on this street by the county was paid for by the landowners. West Babcock was always considered a private road by the county. The county commissioners are seeking to take away their property. They are planning on taking the 60 foot right away without paying for it. He read article 14 of the U.S. Constitution about citizens rights and due process of law and Article 2, Section 17 and Section 29 of the Montana Constitution. He said they would like to amend page 2, line 16.

Jim Stephens, West Babcock Street Home Owners Assoc., said they would like to strike "or by adverse use" on page 2, line 16. He said if these words are left in the bill it allows the government to take their land without due process.

Ray Rowe, West Babcock Street Home Owners Assoc., rose in opposition of the bill.

{Tape : 1; Side : A; Approx. Time Counter : 3:26 p.m.}

Questions from Committee Members and Responses:

SEN. JOHN BOHLINGER asked what the sponsor thought of the amendments. **REP. HANSON** said no one can take a road without a public hearing. **John Youngerberg** said the right to take land by eminent domain or by adverse use is provided for in another section of law. The road still has to be accepted by the county commissioners.

SEN. DUANE GRIMES said on page 2, line 19-21 the House struck this, why? **John Youngberg** said a county road that is not maintained regularly gets a big mud hole in it and the people start driving around it and pretty soon they are driving on the

ridge and it gets maintained on the ridge. A new owner comes in and buys the land and they discover where the old road should of been. This section of law says it doesn't matter where the road is, it stays there. They will still have an easement. He said in the old days they would go around hills, etc. and the road is where it is. He said they are very concerned about the road being moved where ever.

SEN. GRIMES said if the county is maintaining a road and it crosses private land they must get an easement and does this bill take away from that incentive. **John Youngberg** said no, they still have to go through the same procedure to get the road and the county commissioners have to accept the road.

SEN. DOROTHY ECK asked if the opponents are wanting to be compensated for the land on either side of the roadway and has an attorney looked at this. **Jim Stephens** said yes, they had an attorney look at this and there is a sleeper in the adverse language. They could come in through court action and take their land without compensation. They want to make the road 90 feet wide and it would take 30 feet of his property.

SEN. ECK asked if they couldn't get it through adverse use, would they have to go through eminent domain. **Jim Stephens** said yes, and then they would have to pay.

SEN. ECK asked if this would be sufficient to take out the adverse language or would the other part of the law still be a part of this issue. **Mary Vandenbosch** said this deals with the definition of a road and other parts of the statute would apply to the adverse language. **Jim Stephens** said their attorney has looked at this and feels that the adverse language needs to be taken out. **Tom Hardin** said by taking the adverse language out it still wouldn't protect these land owners. This bill has brought together other portions of law to define a road. Land owners have to be reimbursed by the county or the state whether it is by eminent domain or adverse use. The county cannot just come in and take a road and this is defined in other areas of the statute.

SEN. ECK asked if the county could take a road without paying for it? **Vern Petersen** said this bill in no way would allow the county to take a road without compensation to land owners. Wether those words are taken out or not, will have no effect on this bill.

SEN. ECK asked if those land owners will be paid. **Vern Petersen** said they would have to be compensated. There is no provision in this bill or in current law that says a county can just take private property.

SEN. DON HARGROVE asked if there is somewhere in law that says if the proceedings were done before it was challenged, it doesn't matter. **Mary Vandenbosch** said this is a saving clause that applies to proceedings. She said she didn't know if this bill would change this saving clause, but she didn't think it would. **Jim Stephens** said they met with the county and city commissioners concerning the road. He said the city and county are waiting for this law to be passed so they can get a declaratory judgement and the judge to sign it.

SEN. HARGROVE asked if the commissioners have told them that they are going to acquire the road one way or another with no compensation. **Jim Stephens** said yes, they are just waiting for this bill to be passed.

SEN. HARGROVE asked if the county is disputing the ownership of that road. **Jim Stephens** said the county thinks they own it.

{Tape : 1; Side : A; Approx. Time Counter : 3:45 p.m.}

SEN. MAHLUM said he cannot believe they can take land without paying for it. **Ray Rowe** said he has lived on that road for 41 years. He said it used to be a dirt road and the property owners went together and bought the black top and the county put it on. He said there are close to 5000 cars that go down that road a day. He said the road has never been approved a county road by eminent domain and now they are faced with this dilemma.

CHAIRMAN MIKE SPRAGUE asked if this dispute has anything to do with this bill. **Jane Jelinski, MACo,** said one of the problems is there is no clear definition of what a county road is. She said the county has been trying to get the right-of-way well before they knew about this legislation and they are not waiting for this bill to pass.

CHAIRMAN SPRAGUE asked if the Gallatin County Commissioners came up with this bill. **Jane Jelinski** said no.

CHAIRMAN SPRAGUE asked how did this bill come about. **Tom Hardin** said this bill came about from him. He said to try and define a county road they have taken different parts of existing laws and brought them together. He said roads still have to be taken in by eminent domain and the land owners will be compensated. He said petition roads have to be 60 feet.

SEN. BILL GLASER read page 3, line 9-11. **Tom Hardin** said part of that statement is law now in that county commissions have the right to develop the level of maintenance on county roads. He said they have 200 to 300 miles of two track trails that are

petitioned county roads that they don't maintain. The gas tax people made them put a blade on those and that created a road that was lower than the edges of the road and so they quit maintaining those and took the penalties instead.

SEN. GLASER asked why isn't there a Fiscal Note with this bill. **Tom Hardin** said in their county they haven't asked to be paid for the 200 miles of two track trails that they have lost. But other counties have perhaps done that. If the gas tax people ever go back to the policy that they have to maintain two track trails before they can get the money, then they would make a law to cover their back.

SEN. GLASER said if they struck the second half of that sentence on page 2, lines 9-11 is there anything left of this bill. **Tom Hardin** said no, all they are trying to do is protect themselves.

Closing by Sponsor:

REP. HANSON said this bill will not affect the opponents. She said counties don't have a definition of a county road and they need one. She said they have a county road that runs through their property and they have the privilege of paying the taxes of that county road.

{Tape : 1; Side : B; Approx. Time Counter : 3:57 p.m.}

HEARING ON HB 586

Sponsor: REP. RICK DALE, HD 39, Whitehall

Proponents:

Glenna Obie, Jefferson County Commissioner
Jani McCall, City of Billings
Jane Jelinski, Montana Assoc. of Counties
Terry Lonner, Gallatin County Open Lands Board

Opponents: None

Opening Statement by Sponsor:

REP. RICK DALE, HD 39, Whitehall, said currently the law allows for counties to form a park district through a mill levy assessment. This bill would give them the option at voter approval of using a flat fee per household so that the cost of the park district is supported equally by all residents. He said a problem arose, previously, in which they wanted to build a community swimming pool within a park district. He said an agricultural family that had two